

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARLON MONTOKA, individually and )	Case No. 14-cv-00287-SC
on behalf of all other similarly )	
situated, )	ORDER GRANTING MOTION FOR LEAVE
	<u>TO FILE FIRST AMENDED COMPLAINT</u>
Plaintiff, )	
v. )	
SLM CORPORATION and SALLIE MAE, )	
INC., )	
Defendants. )	

Now before the Court is Plaintiff Marlon Montoya's motion for leave to file an amended complaint to add Genesys Telecommunications Laboratories, Inc. ("Genesys") as a defendant. ECF No. 27. Defendants Navient Solutions, Inc. (f/k/a Sallie Mae, Inc.) and Navient, LLC (f/k/a SLM Corporation) have filed a statement of non-opposition to the motion. ECF No. 29. Genesys has appeared specially to oppose the motion. ECF No. 30 ("Opp'n"). Plaintiff has filed a reply. ECF No. 31. Thus the motion is fully briefed, and the Court finds it suitable for determination without oral argument per Civil Local Rule 7-1(b).

1 Federal Rule of Civil Procedure 15(a) permits a party to amend  
2 its complaint once as a matter of course before a responsive  
3 pleading is served. After a responsive pleading is served,  
4 however, a party may amend only by leave of the Court. Fed. R.  
5 Civ. P. 15(a). The Rule instructs that the "court should freely  
6 give leave when justice so requires." Id. The Ninth Circuit has  
7 "stressed Rule 15's policy of favoring amendments, and [has]  
8 applied this policy with liberality." Ascon Props., Inc. v. Mobil  
9 Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989). Ninth Circuit  
10 precedent encourages district courts to grant leave to amend to add  
11 a defendant absent evidence of bad faith, unjust delay, prejudice  
12 to the entering party, or futility. See id.; DCD Programs, Ltd. v.  
13 Leighton, 833 F.2d 183, 187 (9th Cir. 1987).

14 Defendants Sallie Mae, Inc. and SLM Corporation have answered  
15 the original complaint. ECF Nos. 11, 12. Therefore, Plaintiff  
16 must seek leave of the Court to file an amended complaint. This  
17 case is still in the early stages, and there is no evidence of bad  
18 faith on Plaintiff's part. Plaintiff explains that Genesys was not  
19 initially named as a defendant because Plaintiff did not know that  
20 Genesys -- a third party vendor through which Defendants allegedly  
21 transmitted unlawful text messages to Plaintiff -- had sent the  
22 messages at issue in this case. Not until Plaintiff received  
23 Defendants' supplemental initial disclosures on July 1, 2014, did  
24 Plaintiff confirm that the third-party vendor was Genesys. ECF No.  
25 27-1 ("Mot. Memo") at 2.

26 Responses to Plaintiff's motion were due on July 30. Genesys  
27 did not file its opposition brief until five days later, on August  
28 4. Because Genesys' opposition was late, the Court STRIKES its

1 opposition brief and considers the motion unopposed. However, were  
2 the Court to consider Genesys' arguments, Plaintiff's motion would  
3 still be granted. Genesys' only argument against allowing leave to  
4 amend is that such amendment would be futile "because the complaint  
5 is subject to a motion to dismiss." Opp'n at 3. Genesys'  
6 opposition, therefore, is really a motion to dismiss, brought by a  
7 non-party, disguised as an opposition brief. Indeed, Genesys'  
8 opposition is improper even if construed as a motion to dismiss.  
9 Genesys' argument for futility depends on evidence that Genesys has  
10 provided through declarations and exhibits. Opp'n at 4-5. But at  
11 the pleadings stage, the Court assumes the truth of Plaintiff's  
12 well-pleaded factual allegations. Ashcroft v. Iqbal, 556 U.S. 662,  
13 679 (2009). Contrary evidence is therefore irrelevant and  
14 inappropriate.

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1           Ultimately, "it is the consideration of prejudice to the  
2           opposing party that carries the greatest weight" when considering  
3           whether leave to amend should be granted. Eminence Capital, LLC v.  
4           Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). Genesys' brief  
5           never mentions the word prejudice and makes no allegations that  
6           allowing Plaintiff to amend would prejudice Genesys. Finding no  
7           prejudice, and cognizant of the Ninth Circuit's liberal policy  
8           towards amendments, the Court GRANTS Plaintiff Marlon Montoya's  
9           motion for leave to file a first amended complaint.

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11           IT IS SO ORDERED.

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13           Dated: August 21, 2014



14           UNITED STATES DISTRICT JUDGE  
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